

Internal Revenue Service
District Director

Department of the Treasury

P O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:
EP/EO

Employer Identification Number:

Date: APR 01 1996

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of sections 501(c)(3) and 501(c)(6) of the Internal Revenue Code of 1986 and their applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

DP 4/19/96 CR 3/19/96 DP 3/26/96 Tan 3/28/96

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code, which relates to status of organizations under section 501(c)(3) of the Code, provides in part that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours, [REDACTED]
[REDACTED]
[REDACTED]

District Director

Enclosures: 3

Enclosure I

Facts

Information submitted with your application indicates that you are an association of trial lawyers. You are supported by membership dues, currently set at \$[REDACTED] per year. To be a member, one must be a regular, sustaining, or life member in good standing with the Association of Trial Lawyers of America (ATLA), a member in good standing of the Bar of one or more jurisdictions, and is engaged in the representation of plaintiffs in laparoscopic litigation cases. The Bylaws state that each member must agree not to disclose information provided from the organization to anyone associated with defense of any laparoscopic litigation case or representation of any insurance company or hospital on any medical negligence case.

According to the information in the application, during the late eighties and early nineties, laparoscopy has gained widespread popularity as a surgical procedure. As a result of the medical profession's failure to establish uniform and adequate standards for training and competency in the field of laparoscopy, the number of injuries associated with laparoscopic surgery has risen dramatically. You were established in response to the increased amount of litigation involving laparoscopic surgery.

According to the Bylaws, you were created to meet the following objectives:

1. To further the purposes of the Rules of Civil Procedure "securing the just, speedy and inexpensive determination of every action".
2. To offset the inherent advantages favoring defendants in laparoscopic medical malpractice cases by reducing cost, improving access to needed information and assisting in the discovery process.
3. To overcome obstacles which unjustly impede the victims of medical malpractice in the exercise of their rights to seek legal redress.
4. To provide a forum, a network of communication and collegial support among the members of the ATLA engaged in the same or similar areas of litigation for the primary purpose of enabling them to better serve their clients.

[REDACTED]

The Bylaws state that, to achieve the above objectives, you will:

1. provide members with litigation support for the purposes of assisting plaintiffs' counsel in their efforts to prepare their clients' cases for trial, to verify the accuracy of defendants' responses to legitimate discovery requests;
2. will make available documents, depositions, briefs and other materials related to laparoscopic and medical negligence litigation;
3. will develop educational programs and laparoscopic and medical negligence topics in conjunction and coordination with the ATLA;
4. will develop packages of materials, memoranda, articles, bibliographies, and other resources on laparoscopic litigation and medical negligence topics;
5. produce articles, studies and statements for the public dissemination in accordance with the ATLA;
6. disseminate information regarding new developments and group activities through appropriate mailings and/or newsletters; and
7. work with the ATLA Exchange to augment the database available to all ATLA members or may work with other ATLA groups or committees, or any other entities, to further the interest of its members.

You devote, by your estimation, eighty percent of your time providing the assistance described in items 1 and 2 above. According to the information in the application, the assistance provided to members is specific to their clients' cases - cases that are pending in litigation or cases in which litigation is being contemplated.

An officer informed the Service during a telephone conference that individuals of the general public have on occasion telephoned the organization for information concerning laparoscopic litigation. On those occasions, you try to answer their questions and send a packet of information. The officer indicated that you do not advertise to the public that it is available to answer their questions or share any information regarding this subject. He also indicated that, in assisting members with their cases, you only advise by applying your experience to the facts of the cases. You will not interview witnesses or clients nor will you provide consultation for a fee.

You have requested consideration for exemption under both sections 501(c)(3) and 501(c)(6).

Law

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax of those organizations that are organized and operated exclusively for charitable, educational, or religious purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of private interests.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(3) of the Regulations provides that the term "educational" relates to the (a) instruction or training of the individual for the purpose of improving or developing his capabilities or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 501(c)(6) of the Code exempts from Federal income tax business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations defines a business league as an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. The activities of the organization must be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining is not a business league.

Application of Law

SECTION 501(c)(3)

A professional society is an organization of members of a particular trade, profession, or branch of a profession, whose purpose is to advance the professional interests of members or persons engaged in the profession. A professional society may qualify for exemption under section 501(c)(3) if its purpose is to advance the profession by engaging in exclusively educational or scientific activities.

Revenue Ruling 68-504, 1968-2, C.B. 211 describes an organization formed to conduct an educational program for bank employees in a particular urban area. The organization furnishes classrooms and employs local university professors and specialists in banking law to teach courses on various banking subjects. Credit is given by universities for hours spent in such work. The organization purchases textbooks for resale at cost to students. It also publishes a professional magazine containing items of interest and assistance to

[REDACTED]

the members and conducts occasional social affairs to stimulate interest in its educational program. No person may take the courses unless he is a member of the organization; but membership is open to employees of all banks in the area. An organization that instructs or trains individuals to improve their business or professional capabilities may be exempt under section 501(c)(3) of the Code. Thus, this organization is engaged in an educational activity within the meaning of section 1.501(c)(3)-1(d)(3).

Revenue Ruling 71-506, 1971-2 C.B. 233 describes a professional society that qualifies for exemption under section 501(c)(3). The organization described in this revenue ruling is a society composed principally of heating and air conditioning engineers. It was formed to advance the arts and sciences of heating, ventilating, and air conditioning, and allied arts and sciences, for the benefit of the general public by providing facilities for research and dissemination of scientific knowledge. The society engages in research, publishes the results of research, operates a library open to members of the interested public, and engages in other scientific and educational activities. The organization engages in no activities that are primarily directed to promoting the business interests of its member engineers.

Your activities are directed primarily at providing members with litigation support for the purposes of assisting plaintiffs' counsel in their effort to prepare their clients' cases for trial. In this regard, the assistance/education you provide involves your time in applying your experience to the facts of the members' particular cases and verifying the accuracy of defendants' responses to discovery requests.

Because the cases are actual cases which are pending in litigation or actual cases in which litigation is being contemplated, the assistance benefits individual members in the context of their practices. The assistance/education you provide may be said to improve or develop the individual members' capabilities but it is not done for a public purpose. It does not benefit the general public because the particular facts and advice are of an inherently confidential nature. Since you devote most of the estimated 80% of your time assisting your members on information that may not be shared, at least on a timely bases, it cannot be said that your time is devoted exclusively for a public purpose. Your activities do not benefit the general public because the organization has not demonstrated that it has the intent to provide assistance to the general public. There is no effort to advertise your services, resources, or seminars in a place where the general public is likely to read about so that they may seek help or participate.

Accordingly, you do not meet the requirements described in section 1.501(c)(3)-1(d)(3) of the Regulations as an organization operated for educational or research purposes.

SECTION 501(c)(6)

One of the requirements of a business league as defined in section 1.501(c)(6)-1 is that its activities must be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. If a particular activity or service performed by the organization relieves the member of the necessity of securing the service commercially (or performing the service on an individual basis) in order to properly conduct the member's business, resulting in a convenience or economy to the member, the activity or service will be classified as a "particular service" for purposes of section 1.501(c)(6)-1.

In MTB, Inc. v. Commissioner, 734 F.2d 71, 78 (1st Cir. 1984), the United States Court of Appeals for the First Circuit held that a nonprofit corporation which provided maintenance of a computerized system for gathering, storing and distributing to members certain information concerning health and insurability of people who applied for life insurance was not exempt as a business league. The court found that the service helped the member decide whether or not to sell insurance to the applicant and had commercial benefit to the individual member. The court reasoned that without the exchange members would themselves have to check insurance applications for their accuracy.

Revenue Ruling 67-182, 1967-1 C.B. 141 describes an organization of scientists and engineers maintaining a cooperative library of data used in exploration for oil. The purpose of this organization was to establish and maintain a private library of "electric logs", maps, oil publications, and oil information services, as well as other matters which are a source of geological data, for its members' use as an aid in their oil exploration businesses. The material for the library is furnished by the members. Membership in the organization is limited to a small group.

[REDACTED]

The instant organization is making specialized information available to its members on a cooperative basis. This serves as a convenience and economy in the conduct of their businesses. The Service concluded that the operation of the library as described is an activity which constitutes the performance of particular services for individual persons. Furthermore, since membership is limited and the facilities of the organization are made available only to participating members, the organization's activities are not aimed at the improvement of business conditions in the industry as a whole.

In determining whether an activity constitutes a particular service to an individual, the focus is on whether the association's activities advance the membership's interests generally, by virtue of their membership in the industry, or whether they assist members in the pursuit of their individual businesses.

In assisting members with their active cases as described in the above "Facts" section, you are primarily engaged in the performance of particular services for individual members. Accordingly, you do not meet the requirements described in section 1.501(c)(6)-1 of the Regulations.